

In the Matter of Merchant Mariner's Document No. Z-469280-D1(R)
Issued to: BERNARD TURK

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

767

BERNARD TURK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 5 January, 1954, an Examiner of the United States Coast Guard at Mobile, Alabama, suspended Merchant Mariner's Document No. Z-469280-D1(R) issued to Bernard Turk upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an oiler on board the American SS ALCOA PATRIOT under authority of the document above described, on or about 22 December, 1953, while said vessel was in a foreign port, he assaulted and battered a member of the crew named Alphonse L. Babin, Jr., with a dangerous weapon; to wit, a beer bottle.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of the seaman allegedly assaulted as well as a certified copy of a log entry concerning this incident.

In defense, Appellant offered in evidence his own sworn testimony. He stated that he went to Babin's room at his request and took a beer bottle for protection but that he did not intend to cut Babin and did not hit him with the beer bottle until after Babin struck the first blow.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-469280-D1(R), and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of eight months - four months outright and four months suspension on sixteen months

probation from 5 January, 1954.

From that order, this appeal has been taken, and it is urged that the order is too severe; Appellant did not call witnesses to testify because he thought he would be cleared since the cutting was an accident; Appellant carried the beer bottle to Babin's room because he had previously drawn a knife on another member of the crew; Babin was a trouble maker on board the ship; and Appellant had a clear record during ten years at sea.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 22 December, 1953, Appellant was serving as an oiler on board the American SS ALCOA PATRIOT and acting under authority of his Merchant Mariner's Document No. Z-469280-D1(R) while the ship was at Moengo, Dutch Guiana.

On this date, Appellant and Babin, a wiper, had been ashore drinking beer and they returned to the ship shortly before midnight. An argument took place between the two men concerning five dollars which Babin had loaned to Appellant. Appellant was told by Babin that he would take Appellant out on the dock when the ship arrived at Mobile, Alabama.

Between a half hour and an hour later, Appellant was invited by Babin to come into his room. Appellant went to the room and took an empty beer bottle for protection. When Appellant walked into Babin's room, the latter struck Appellant a hard blow in the nose with his fist. Appellant retaliated by striking Babin with the beer bottle. The bottle broke and cut Babin on the left cheek. The cut was about two and a half inches long and required thirteen stitches.

There is no record of prior disciplinary action having been taken against Appellant during his ten years at sea.

OPINION

Regardless of whether Appellant intended to cut Babin with the beer bottle, the fact remains that he entered Babin's room with intention of using the bottle if Babin started a fight. Since Appellant voluntarily entered the room at a time when it was reasonable to assume that Babin was in a belligerent mood as a result of the prior argument, the injury to Babin cannot be justified on the grounds of self-defense or accident. The fact that Babin was a trouble maker on board ship was all the more reason why Appellant should have stayed away from him.

Appellant was afforded every opportunity to have witnesses subpoenaed to testify in his behalf at the hearing. And in view of Appellant's admission that he struck and cut Babin with the beer bottle, it is not apparent what purpose any witnesses on behalf of Appellant would have served.

As stated by the Examiner, this was a serious offense. The leniency of the order can only

be justified by Appellant's prior unblemished record.

ORDER

The order of the Examiner dated at Mobile, Alabama, on 5 January, 1954, isAFFIRMED.

J.A. Hirshfreed

Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 22nd day of September, 1954.